HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is not approved for reporting.)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

W.P. No. 1438 of 2003 (SS)

Kumaon Van Sharmik Sangh vs. Chief Conservator

Approved for reporting.

_____

~~Not approved for reporting~~

Date of decision 22.12.2003

Initial of Judge

HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 1438 of 2003 (SS)

Kumaon Van Sharmik Sangh, Ranikhet ...……. Petitioner

Versus

Chief Conservator of Forest, Uttaranchal
& others ……... Respondents

Sri M.V. Shah, Advocate for the petitioner
Standing Counsel for the respondent.

Dated: 22.12.2003

Hon'ble Rajesh Tandon J.

Rule. Respondents waive service.

Heard the learned counsel for the parties at length.

By the present writ petition the petitioner has prayed for the issue of a writ, order or direction in the nature of mandamus directing the respondents to pay the arrears of minimum according to the recommendations of 5th pay Commission from 1.1.1996 to 27.09.1999.

Briefly stated the fcts giving rise to the present writ petition are that the petitioner is a registered society bearing Registration No.7887 of Class IV employees working in the Forest Department. The petitioner has stated that Allahabad High Court in Special Appeal

No. 653/1995 State of U.P. vs. Putti Lal has directed the respondents to regularize the services of those employees who have completed more than 10 years of service and further to pay the minimum of pay scale according to the recommendation of 5th Pay Commission but despite various representations filed by the petitioner, respondents have not paid arrears of minimum pay scale to the employees of petitioner Union.

In Writ Petition No. 33914 of 1995 Hon'ble Mr. Justice S.R. Singh of the Allahabad High Court passed the following order:

"Standing counsel prays for and is granted six weeks time to file counter affidavit.

List for admission thereafter.

Meanwhile respondents are directed not to undertake the exercise of filling in the posts held by the petitioner no.2 and the members of the petitioner no.1 without first reckoning with their claims for regularisation in view of the judgment dated 25.2.1993 in W.P. No. 15627 of 1988, Kumaon Ban Sharmik Sangh Centre at Ranikhet and another vs. State of U.P. and another. The respondents are also directed to pay salary/wages to the members of the petitioner no.1 at the rate equivalent to the minimum pay in the scale admissible to the regular employed workers in the cadre."

The Apex Court in the case of State of U.P. & others vs. Putti Lal 2002(1) E.L.C. 524 (SC) has held that daily wagers would be entitled to draw at the minimum of the pay scale being received by their counter part in the Government and the question of their regular absorption will obviously be dealt with in accordance with the statutory rule. The order is mutatis mutandis apply to the State of Uttaranchal as held by the Apex Court as under:

"So far as the State of Uttaranchal is concerned, a scheme for regularization of daily workers has been produced before us which prima facie does not appear to be objectionable excepting the provision regarding qualification for regularisation. Be it sated that the qualification essential for being regularised would be the qualification as was relevant on the date a particular employee was taken in as a daily wager and not the qualification which is being fixed under the scheme. The fact that the employees have been allowed to continue for so many years indicates the existence or the necessity for having such posts. But still it would not be open for the court to indicate as to how many post would be created for the absorption of these daily wages workers. Needless to mention that the Appropriate Authority will consider the case of these daily wagers sympathetically who have discharged the duties for all these years to the satisfaction of their authority concerned. So far as the salary is

concerned as we have stated in the case of State of Uttar Pradesh, a daily wager in the State of Uttaranchal would be also entitled to the minimum of the pay scale as is available to his counter part in the Government until his services are regularised and he is given regular scale of pay."

As stated by the petitioner that the Union of the employees has made several representations to the respondents but said representations have not been decided as yet.

The respondents are, therefore, directed to decide the representations of the petitioner in the light of the directions of the Allahabad High Court and the Apex Court within six weeks after the receipt of the certified copy of the order.

With the aforesaid observations the writ petition is disposed of. No order as to costs.

Rajesh Tandon

22.12.2003
Dhyani